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COMMITTEE AGAINST TORTURE

Twenty-fifth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 456th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 24 November 2000, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.456/Add.1.

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GE.00-46310 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

States parties' reports to be considered by the Committee at its twenty-sixth session

1. The CHAIRMAN read out the following list of States parties whose reports would be considered at the twenty-sixth session, together with the names of the country rapporteurs and alternate country rapporteurs:

Second periodic report of Georgia: Mr. Yakovlev and Mr. Mavrommatis

Third periodic report of Greece: Mr. Burns and Mr. Rasmussen

Second periodic report of the Czech Republic: Mr. Mavrommatis and Mr. El Masry

Initial report of Slovakia: Ms. Gaer and Mr. Yu Mengjia

Initial report of Bolivia: Mr. González Poblete and Mr. Silva Henriques Gaspar

Initial report of Brazil: Mr. Silva Henriques Gaspar and Mr. González Poblete

Initial report of Costa Rica: Mr. González Poblete and Mr. Rasmussen

Initial report of Kazakhstan: Ms. Gaer and Mr. Yakovlev.

Third periodic report of Guatemala (continued) (CAT/C/49/Add.2)

2. At the invitation of the Chairman, the members of the Guatemalan delegation took places at the Committee table.

3. Mr. GONZALEZ POBLETE (Country Rapporteur) read out the following text containing the conclusions and recommendations adopted by the Committee concerning the third periodic report of Guatemala:

"1. The Committee considered the third periodic report of Guatemala (CAT/C/49/Add.2) at its 450th, 453rd and 456th meetings, held on 21, 22 and 24 November 2000 (CAT/C/SR.450, 453 and 456) and adopted the following conclusions and recommendations.

I. Introduction

2. Guatemala has been a State party to the Convention since 5 January 1990. It has not made the declarations provided for in articles 21 and 22 of the Convention. It is also a party to the Inter-American Convention to Prevent and Punish Torture.

3. The report was submitted on 3 February 2000. It covers the period from 1 April 1998 to 31 December 1999. When the Committee began its consideration of the report, the head of the delegation of Guatemala updated it in his oral introduction. The report is in keeping with the general guidelines the Committee adopted on the form and contents of periodic reports.

4. The Committee thanks the delegation for its replies and for its frankness and cooperation during the dialogue.

II. Positive aspects

5. The Committee takes note with satisfaction of the following positive aspects:

(a) The announcement by the President of the Republic of Guatemala, repeated by the head of the delegation during his oral introduction, that the question of human rights will have pride of place in government management and that there is an unavoidable need to transform the administration of justice and put an end to impunity;

(b) Recognition of the responsibility of the State in emblematic cases of human rights violations substantiated under the inter-American system for the protection of human rights and the announcement of willingness to grant such recognition in other pending cases;

(c) The adoption of the Career Judicial Service Act, which governs the activities of judges and magistrates in order to protect their independence and professional excellence in the exercise of their functions;

(d) The consolidation of the College of Legal Studies as an initial and in-service training institution responsible for the objective and impartial selection of new entrants to the judiciary;

(e) The conclusion of the process of integration into a single National Civil Police as a result of the demobilization of the Treasury Police;

(f) The establishment within the Office of the Human Rights Procurator of the Office of the Ombudsman for Prisoners and Due Process, which is authorized to monitor judicial and prison officials in order to protect sectors in which situations of violations of human rights and judicial guarantees frequently occur;

(g) The conclusion by the Government and the United Nations Human Rights Verification Mission in Guatemala (MINUGUA) of the agreement for the implementation of the Prison Modernization Programme and, as part of this Programme, the establishment of the Penitenciary System College, whose activities began in November 1999;

(h) The decision by the Government, announced to the Committee by the President of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) and head of the delegation, to propose the amendment of articles 201 bis and 425 of the Penal Code in order to define the defence of torture in terms that are fully in keeping with article 1 of the Convention.

III. Factors and difficulties impeding the application of the Convention

6. (a) The increase in acts of intimidation, harassment and death threats against judges, prosecutors, complainants, witnesses and members of human rights bodies and victims' and journalists' organizations, which continue to prevent the submission of complaints of human rights violations and to hold up progress in politically sensitive cases which involve members of the military or government officials and relate to the organization and activities of the intelligence services. The fear to which such acts give rise seriously affects the freedom of action of individuals and organizations involved in the protection of human rights, as well as the autonomy of the administration of justice;

(b) Legislative provisions which allow the army to take part in public security and crime prevention activities and which do nothing to promote the demilitarization of society, weaken the civil power of the State and are a reminder of the militarization of the country during the armed conflict;

(c) The repeated concealment of persons responsible for human rights violations by their superior officers, as a result of the lack of administrative investigations and of the failure to adopt the necessary disciplinary measures and, in some cases, of their acquiescence, as reflected in their presence during, and even their direct participation in, the commission of violations;

(d) Parallel investigations tacitly authorized or agreed to by the State and conducted by government bodies not legally authorized to do so or by clandestine structures in cases of human rights violations in which responsibility is attributed to government officials; these parallel investigations jeopardize the autonomy and independence of the judiciary and the Public Prosecutor's Office and defeat the purpose of and hamper investigations of these crimes;

(e) The lack of prison population statistics which are broken down according to the prisoners' ethnic group and which might show that the prison persecution policy is based on racial discrimination;

(f) The inadequacy of the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice in providing effective protection and security for persons involved, in various capacities, in criminal proceedings. The Committee recalls that in its observations on the second report, it drew attention to the impact of such inadequacy on continuing impunity and pointed out that the protection of victims and witnesses is a duty imposed on the State by article 13 of the Convention.

IV. Subjects of concern

7. (a) The deterioration of the human rights situation in Guatemala and, in particular, the increase in proven cases of torture and other cruel, inhuman and degrading treatment or punishment, as compared with the situation when the Committee considered the second periodic report. The fact that the main perpetrators of these violations are officials of the National Civil Police, particularly its Criminal Investigations Service, has frustrated hopes that there might be a renovated single police institution under civilian command, without the defects that characterized police bodies in the past;

(b) The continuing existence of impunity for offences in general and for human rights violations in particular, as a result of repeated dereliction of duty by the government bodies responsible for preventing, investigating and punishing such offences. Impunity exists for most of the violations committed during the internal armed conflict and those committed after the Peace Agreements were signed;

(c) Serious quantitative and qualitative shortcomings in the system of the administration of justice with regard to criminal investigations and guarantees of due legal process;

(d) The inadequate definition of the offence of torture in article 201 bis of the Penal Code, as already pointed out by the Committee during its consideration of the second report;

(e) The lack of an independent commission with the broadest powers and resources to investigate the circumstances of the kidnapping of disappeared persons on a case-by-case basis and to locate their remains. Uncertainty about these circumstances causes their families serious and continuous suffering;

(f) The lack of systematic procedures for the periodic review of the practical implementation of interrogation rules, instructions, methods and practices and arrangements for the treatment of persons deprived of their liberty. Respect for persons detained in prisons, including high security prisons, whose treatment must be in keeping with the Standard Minimum Rules for the Treatment of Prisoners recommended by the United Nations.

V. Recommendations

8. The Committee recalls that the initial report was considered at a time when the armed conflict was still going on and the second, when the Peace Agreements had just been concluded. The consideration of the third report has taken place four years after the conclusion of the Agreements. The Committee nevertheless has to reiterate most of the recommendations it made during the consideration of the preceding reports.

9. The Committee reiterates the following recommendations, which have already been made:

(a) Amendment of the provisions of the Penal Code, especially articles 201 bis and 425, to bring the definition of the offence of torture and its punishment into line with articles 1 and 4 of the Convention;

(b) Provision of sufficient human and material resources to enable the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice to operate effectively;

(c) Continuation of technical training programmes for law enforcement officials, prosecutors, judges and National Civil Police officials, with particular emphasis on their obligations to respect and protect human rights;

(d) Bearing in mind that, during the introduction of the initial report and the second report, the representatives of Guatemala said that the process leading up to the formulation of the declaration under article 22 of the Convention had begun and repeated the statement during the consideration of the third report, the Committee invites Guatemala to make the declaration in question.

10. The Committee recommends:

(a) The modernization of the system of the administration of justice and the adoption of measures to eliminate its weaknesses and shortcomings and to strengthen the autonomy and independence of the judiciary and the Public Prosecutor's Office, including those already recommended by the Historical Clarification Commission and the Commission for the Modernization of Justice;

(b) The repeal of provisions authorizing the army's involvement in public security and crime prevention, which should be the exclusive prerogative of the Police;

(c) The establishment of independent external control bodies and procedures to monitor the conduct of National Civil Police officials, with broad powers to investigate and impose disciplinary penalties, without prejudice to the powers of the Public Prosecutor's Office to investigate and of the courts to punish misconduct constituting a crime;

(d) The absolute prohibition on any government body not procedurally authorized to do so to conduct investigations into criminal matters in parallel with those legally entrusted exclusively to judicial bodies;

(e) The establishment of an independent commission to investigate the circumstances of the kidnapping of disappeared persons and to determine what happened to them and where their remains are located. The Government has an obligation to spare no effort to find out what really happened in such cases and thus give effect to the legitimate right of the families concerned, provide compensation for the loss or injury caused and prosecute the persons responsible;

(f) The establishment of systematic procedures for periodic reviews of interrogation rules, instructions, methods and practices, as provided for in article 11 of the Convention."

4. Mr. GODOY MORALES (Guatemala) expressed his delegation's gratitude to the members of the Committee for the goodwill and patience they had shown in their discussion on his country's report. Guatemala's cooperation with international human rights bodies had contributed greatly to the advances the country had made thus far, and the Committee's recommendations would be of great help in achieving further progress. The Committee had highlighted a great many of the human rights problems that existed in Guatemala, and the Presidential Commission on human rights policy (COPREDEH) would press for appropriate measures to be taken by State bodies in order to comply with its recommendations. Although the recommendations referred only to torture, COPREDEH regarded them as a means of creating a general human rights context in which torture could be eliminated in Guatemala. He hoped that when his country submitted its next report, torture would have become a thing of the past.

The public part of the meeting was suspended at 10.55 a.m. and resumed at 12.30 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

5. The CHAIRMAN said that, if funding was available, the Committee might send a representative to attend the meetings of the preparatory committee of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Tehran in February and in Geneva in May 2001, as well as the World Conference itself. Mr. Yu Mengjia volunteered to attend the meeting in Tehran, Ms. Gaer the meeting in Geneva and Mr. Burns the World Conference.

6. Ms. GAER introduced the following proposed contribution of the Committee to the World Conference.

"DRAFT

Contribution of the Committee against Torture to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

proposed by Ms. Felice Gaer

November 2000

1. The Committee against Torture recalls that article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates, in its definition of torture, that discrimination is one of the prohibited purposes of an act of torture. The Convention states:

'torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person [...] for any reason based on

discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.'

2. In the course of its review of State party reports on compliance with the provisions of the Convention, the Committee against Torture has repeatedly expressed concern about the use of torture and other cruel, inhuman or degrading treatment or punishment against vulnerable groups, including national and ethnic minorities, asylum-seekers, refugees and non-citizens. The Committee has also received information and raised questions about allegations of many related forms of discrimination, xenophobia, and related intolerance based on racial, religious, linguistic, minority, or ethnic status, or based upon sex, age, disability, sexual orientation, citizenship or other status.

3. The Committee observes, with regret, that discrimination of any kind can create a climate that can more easily accept torture and ill-treatment of the 'other' group subjected to intolerance and discriminatory treatment. Discrimination undercuts the realization of equality of all persons before the law.

4. The World Conference, scheduled for Durban (South Africa) in September 2001, will examine racism, racial discrimination, xenophobia and other related problems which can hamper the realization of the rights ensured in international human rights instruments, including the Convention against Torture.

5. The Committee against Torture recommends that all States ratify the Convention against Torture, which now stands as the least-ratified of the six core international human rights instruments. In addition, it urges all States to advance the internationally recognized and legally binding framework to combat and prevent discrimination which is found in the six core human rights instruments by bringing about universal ratification of these.

6. The Committee recommends that States take all necessary steps to ensure that public officials, including law enforcement officers, do not apply discriminatory practices and do not manifest contempt or racial hatred or xenophobia which may lead them to acts amounting to torture or ill-treatment against vulnerable groups, in particular ethnic, racial, religious, linguistic, or national minorities, asylum-seekers or refugees, or based upon other status.

7. The Committee stresses that article 10 of the Convention obligates each State party to 'ensure that education and information about the prohibition of torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials, and others who may be involved in the custody, interrogation *or treatment of* any individual subjected to any form of arrest, detention, or imprisonment.' Such educational measures should explicitly address the implications of the fourth purpose of torture ('discrimination of any kind') found in article 1 of the

Convention. These educational efforts can not only help prevent torture in the criminal justice sector, but should be extended to help eradicate intolerance among the broader public as part of the efforts connected to the World Conference.

8. The Committee also stresses the vital importance of having transparent and effective official procedures through which individuals can raise complaints of ill-treatment and torture, of unequal access to justice and related concerns. It is essential that States parties ensure all alleged victims have access to needed information, support and legal aid, as appropriate. Among the institutions that facilitate such recourse procedures are the courts, as well as an ombudsman, national human rights commission or other related body. The way such institutions address the element of discrimination when examining allegations of torture should be assessed to identify any need for improved effectiveness of these mechanisms.

9. An essential element in eradicating racism, racial discrimination, xenophobia, and related intolerance is overcoming impunity. Under the Convention, States are required to bring to justice those responsible for acts of torture, whether committed against a single individual or a broad population group.

10. The Committee also notes that, with regard to non-citizens and asylum-seekers, States parties must ensure that racism, racial discrimination, xenophobia or related intolerance do not result in decisions of deportation to another State where there are grounds for believing that the deportee would be in danger of being subjected to torture. States should give special consideration to the possibility of substantial risk of torture that may be faced based upon his/her membership in a group subject to discriminatory treatment in another State to which that individual may be returned.

11. A World Conference offers the opportunity for States and representatives of civil society and non-governmental organizations concerned with human rights to reflect on ways to address most effectively the major problems facing it regarding racial discrimination and related intolerance and to establish a set of goals for themselves to pursue both nationally and internationally. By devoting attention to appropriate treatment of persons belonging to vulnerable groups and those suffering discrimination, the participants in the World Conference will, hopefully, take steps to ensure that public officials and law enforcement agencies are free from bias against vulnerable groups, particularly with regard to torture and ill-treatment."

7. The Conference was a major event in the United Nations human rights programmes, and the treaty-monitoring bodies had all been invited to attend. It seemed important to refer to the Convention's provisions and the Committee's practice in identifying and addressing discrimination and other forms of intolerance. The draft stressed that educational measures should explicitly address acts of torture committed "for any reason based on discrimination of any kind", as set out in article 1 of the Convention. Similarly, although remedies existed, the way the courts, the ombudsman, national human rights commissions and other related bodies addressed the element of discrimination when examining allegations of torture should be assessed in order to identify any need for improving the effectiveness of those mechanisms.

The Committee should also point out that, of the six core instruments, the Convention against Torture was the one with the fewest ratifications, and it must urge all States to advance the internationally recognized and legally binding framework for combating and preventing discrimination as contained in the six core instruments by working to achieve their universal ratification.

8. Mr. EL MASRY suggested that, as the draft contribution called upon all States to ratify the Convention, it should ask them first to accede to it. However, some States might find it difficult to do either, and so a more attainable objective for the Conference would be to urge all States to include a definition of torture as a criminal offence in their domestic law.

9. The CHAIRMAN endorsed those suggestions. He took it that the Committee wished to adopt the draft contribution to the World Conference, as amended.

10. The Committee's draft contribution to the World Conference, as amended and with minor drafting changes, was adopted.

CLOSURE OF THE SESSION

11. The CHAIRMAN announced that it was Mr. Bruni's last session as Secretary of the Committee, since he had been promoted to the post of senior human rights officer and treaty team leader. As he had served as Secretary since the very first session of the Committee in 1987, his departure would be deeply regretted, not least because of the historical memory he had accumulated over the period. Mr. Bruni's work had always been impeccable: he responded at once to every request, took the initiative where necessary, kept his composure under difficult circumstances and managed to obtain resources against all odds. His new post would fortunately require him to remain in touch with the Committee, which proposed to involve him in its future missions to States parties. On behalf of the Committee, he congratulated Mr. Bruni and wished him every success in his new position.

12. After the customary exchange of courtesies, he declared the twenty-fifth session of the Committee against Torture closed.

The meeting rose at 12.45 p.m.